

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3  
4 BRANCH BANKING AND TRUST  
COMPANY,

5 Plaintiff,

6 v.

7 REGENA HOMES, LLC, *et al.*,

8 Defendants.  
9

Case No. 2:12-cv-00451-APG-GWF

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
MOTION FOR NON-TAXABLE  
COSTS**

(ECF No. 199)

10 Plaintiff Branch Banking and Trust Company previously moved for an award of  
11 attorney's fees and non-taxable costs incurred in connection with this matter. I denied BB&T's  
12 request for non-taxable costs because it was unclear what costs BB&T was seeking as non-  
13 taxable costs. However, I granted BB&T leave to file a new motion for non-taxable costs.

14 BB&T renews its motion for non-taxable costs in the amount of \$11,022.22 and attaches  
15 in support a declaration and a spreadsheet purporting to show costs incurred in this action. The  
16 defendants oppose, arguing that the description of certain costs is inadequate to determine what  
17 the cost was, whether it was related to this litigation, and whether it was reasonable. Specifically,  
18 the defendants object to the following items as not sufficiently described: (1) cost items for  
19 "Rossal/Regena"; (2) cost items for "PMK and Expert depositions"; (3) cost items for  
20 "Depositions of Rich Yach and PMK of Regena & Jones Windmill"; and (4) Westlaw research.  
21 The defendants also object to paying for travel expenses for the plaintiff's counsel to attend  
22 hearings in Las Vegas because they contend plaintiff's counsel's firm has competent attorneys in  
23 Las Vegas who could have handled the matters without incurring those expenses. Finally, the  
24 defendants object to two entries that appear to be duplicative for deposition preparation of an  
25 appraiser.

26 BB&T responds that the agreements between the parties do not condition the recovery of  
27 fees on reasonableness. BB&T also argues the travel expenses were reasonably incurred because  
28 counsel had expertise in the relevant areas of law. As to the expert costs, BB&T argues the

spreadsheet shows the entries are not duplicative because they involve two different descriptions and two different billing numbers.

## **I. LEGAL STANDARD**

Non-taxable costs are recoverable on a motion to the court under Rule 54(d)(2). Fed. R. Civ. Proc. 54(d)(2); *see also* LR 54-16(b)(2) (a motion for attorney’s fees must include “[a]n itemization of all costs sought to be charged as part of the fee award and not otherwise taxable pursuant to LR 54-1 through 54-15”). An award of costs involves a two-step inquiry. I must first determine who is a “prevailing party” under Rule 54, and then I must determine “how much (if any) costs should be awarded to the prevailing party.” *Shum v. Intel Corp.*, 629 F.3d 1360, 1366 (Fed. Cir. 2010); *Ass’n of Mex.-Am. Educators v. Cal.*, 231 F.3d 572, 593 (9th Cir. 2000) (noting that district courts have discretion in choosing to award costs under Rule 54(d)). There is a presumption in favor of awarding costs to the prevailing party. *Dawson v. City of Seattle*, 435 F.3d 1054, 1070 (9th Cir. 2006). To overcome this presumption, the losing party must establish a reason to deny costs. *Id.*

As stated in my prior order, BB&T is a prevailing party who is entitled to recover some non-taxable costs under the loan documents. ECF No. 195. Thus, the only question is what amount, if any, BB&T should be awarded.

### **A. Rossal/Regena**

The spreadsheet identifies various costs items that are described only as “Rossal/Regena.” ECF No. 199-1 at 5. These items are not sufficiently described for me to determine whether the costs incurred were reasonable. BB&T contends it need not show its costs were reasonable because the loan documents do not limit recovery to reasonable costs. However, every contract has an implied covenant of good faith and fair dealing. *See Ins. Co. of the W. v. Gibson Tile Co.*, 134 P.3d 698, 702 (Nev. 2006). Consequently, BB&T cannot seek unreasonable or unrelated costs. Because BB&T has not adequately described these requested costs, I deny them.

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1 **part.** BB&T is awarded **\$8,318.89** in non-taxable costs. The clerk of court is instructed to  
2 amend the Judgment (ECF No. 196) accordingly.

3 DATED this 28th day of April, 2017.

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7 ANDREW P. GORDON  
8 UNITED STATES DISTRICT JUDGE  
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